

REMARKS

Upon entry of the Amendment, Claims 1-7, 11-17, 19 and 21-27 will be pending in the application.

Claims 1 and 11 are amended to recite “a discharging position above the surface of the liquid remaining in the container”.

Claims 18 and 20 are canceled.

Claims 26-27 are added based on support, for example, in Figures 1(A)-1(F). No new matter is added.

Entry of the Amendment is respectfully requested along with reconsideration and review of the claims on the merits.

Response to Claim Rejections - 35 U.S.C. § 103

A. Claims 1, 3-5, 7, 11, 13-15, and 17-21 are rejected under 35 U.S.C. §103(a) as assertedly obvious over JP 62-184357 in view of Knobel (U.S. Patent No. 5,482,863), for the reasons given in the Office Action.

B. Claims 2 and 12 are rejected under 35 U.S.C. §103(a) as assertedly being unpatentable over JP 62-184357 in view of Knobel as applied to Claims 1 and 11 respectively above, and further in view of JP 64-27626, for the reasons given in the Office Action.

C. Claims 6 and 16 are rejected under 35 U.S.C. §103(a) as assertedly being unpatentable over JP 62-184357 in view of Knobel as applied to Claims 1 and 11 respectively above, and further in view of Makino et al (U.S. Patent No. 5,555,767), for the reasons given in the Office Action.

D. Claims 22-24¹ are rejected under 35 U.S.C. §103(a) as assertedly being unpatentable over JP 62-184357 in view of Knobel as applied to Claims 1 and 11 respectively above, and further in view of EP 0527059, for the reasons given in the Office Action.

The Examiner recognizes that JP 62-184357 in view of Knobel fails to disclose discharging the liquid at a position limited in a horizontally external position to the sucked position or sucked near the center of the container.

The Examiner cites EP 0527059 as a further example of the state of the art whereby it is known and desirable to automatically move the position of the suction and discharge to various positions during the operation of a pipette for mixing in a container, and the Examiner deems that it would have been obvious to one of ordinary skill in the art to modify or limit the positions of the sucking and discharge at any appropriate position so that mixing is optimized.

In response to Applicants' Rule 132 Declaration filed December 24, 2003, showing that with JP '357's disclosure it would be difficult to agitate whole blood, the Examiner states that the Declaration does not provide sufficient evidence that the mere difficulty in processing a more viscous fluid such as blood would render the combination unobvious in processing a thicker fluid such as blood.

The Examiner is unpersuaded by Applicants' argument that JP '357 teaches away from discharging the liquid "directly into liquid remaining in the container" and points to the

¹ The Examiner appears to have inadvertently omitted Claim 25 from this rejection, as Claim 24 and Claim 25 are both directed to a sucked position near the center of the container. Applicants request clarification from the Examiner. In the meantime, Applicants proceed on the assumption that Claim 25 was intended by the Examiner to be included in this rejection.

translation of JP '357 in the Office Action.

With regards to the discharge of the liquid towards a container's inclination, the Examiner states that Applicants have insufficiently addressed the combination of references applied above in the rejection of the claims, and have only discussed Knobel and JP '357 individually, such that Applicants' arguments are unpersuasive.

Applicants respond as follows.

As previously noted, Claims 1 and 11 are amended to recite "a discharging position above the surface of the liquid remaining in the container and which is horizontally different from a sucking position where the liquid has been sucked to thereby stir the liquid".

Claims 18 and 20 are canceled, making the rejection of these claims moot.

Applicants submit that the amended independent Claims 1 and 11 are not rendered obvious by the cited references and combinations thereof.

For example, regarding the obviousness rejection of independent Claim 1 over the combination of JP '357 with Knobel, Applicants submit that the present invention achieves unexpectedly superior results of stirring liquids when suction and discharge are controlled automatically at horizontally different positions. Applicants point to the test results of the Rule 132 Declaration previously submitted on December 24, 2003.

The Rule 132 Declaration displays unexpectedly superior results (see the data in Table 2, including details on the reference liquid). The experimentation discharged the blood at positions above the surface of the liquid remaining in the container (see Conditions A and D), but not at a position below the surface of the liquid. As clearly shown in the experimental results described

in the Rule 132 Declaration, discharging the liquid above the surface of the liquid is effective for stirring the liquid, in comparison with discharging the liquid below the surface of the liquid (in the case that the discharging position is in the liquid).

Whole blood was employed in the experimentation in the Rule 132 Declaration since blood is useful for determining the stirring ability due to its high solid content, its color and its high viscosity in comparison with that of water. The whole blood is completely stirred by using a touch mixer in the experimentation which provides for the mixed blood to be mixed extremely uniformly. Since stirring blood is really difficult, if it is possible to stir blood, it is usually possible to stir other liquids as well.

Regarding the rejection of dependent Claims 22-23, reciting “wherein the discharged position is limited to a position which is horizontally external to the sucked position”, the Examiner applies EP 0527059 as teaching automatically moving the position of the suction and discharge to various positions during the operation of a pipette for mixing in the container (see Office Action, paragraph 6, at pages 7-8). However, Applicants submit that EP 0527059 discloses the specific situation where the position of the pipette is only varied vertically when sucking the specimen and when discharging the specimen (see page 3, lines 23-31). In other words, the pipette in Figure 1 can only be moved up and down by an automatic driving means (see element 25), but the pipette cannot be moved from side to side according to dependent Claims 22-23.

Thus, EP 0527059, even combined with JP '357 and Knobel, fails to render obvious the claimed element "wherein the discharged position is limited to a position which is horizontally external to the sucked position".

Accordingly, Applicants respectfully request reconsideration and review of the claims on the merits.

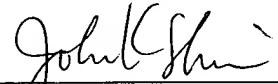
Furthermore, Applicants request a telephonic interview prior to the next Office communication to clarify particular claim elements with the Examiner.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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